UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

STANDARD REGISTER, INC. d/b/a
TAYLOR COMMUNICATIONS

and **Case No. 05-CA-194336**

LOCAL 594-S, DISTRICT COUNCIL NO. 9
OF THE GRAPHIC COMMUNICATIONS CONFERENCE
OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Brendan Keough and Andrea Vaughn, Esqs., for the General Counsel.
Miles Lawlor, Esq, (Ferrara Fiorenza, P.C., East Syracuse, New York) for the Respondent.
Peter Leff, Esq. (Mooney, Green, Saindon, Murphy and Welch, P.C., Washington, D.C.) for the Charging Party.

DECISION

STATEMENT OF THE CASE

Arthur J. Amchan, Administrative Law Judge. This case was tried in Baltimore, Maryland on November 1-3 and 16, 2017. Local 594-S filed the initial charge on March 6, 2017 and the General Counsel issued the complaint on June 30, 2017 and an amended complaint on October 6, 2017.

The General Counsel alleges that Respondent violated Section 8(a)(1) of the Act by conducting a poll of bargaining unit employees on December 8, 2016 and another poll on March 7, 2017. He also alleges that Respondent violated the Act by withdrawing recognition of the Charging Party Union on March 8, 2017 and thereafter unilaterally implementing changes to unit employees' terms and conditions of employment. I find that the polls were legal and that Respondent did not violate the Act in withdrawing recognition from the Union.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a corporation, is a specialty printer of business forms such as checks. The facility in this case is located in York, Pennsylvania, from which Respondent annually sells and ships goods valued in excess of $50,000 directly to points outside of Pennsylvania. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Background relating to Respondent's York plant and its relationship with the Charging Party Union

Standard Register operated the York plant since at least 1990. From at least that date, its production and maintenance employees were represented by the Charging Party Union, Local 594-S of the Graphics Communications Conference. In about 2007, the Union became affiliated with the International Brotherhood of Teamsters.

In 2012 Standard Register laid off many of its employees. As a result the bargaining unit shrank between 2010 and 2012 from about 84 to 45 employees.

In 2013, Standard Register acquired WorkflowOne, a competitor whose facility was located within a few miles of the York plant. In 2014, it closed the WorkflowOne plant and transferred 25-30 employees to its York plant Workflow was not unionized and its employees were required to join the Union, pay an initiation fee ($150-$200 for press operators) and union dues once they became employees of Standard Register. In accordance with the collective bargaining agreement between Standard Register and the Union, dues was deducted from employees' paychecks.

Standard Register filed for bankruptcy in March 2015. The plant was operated by Standard Register Acquisitions from March 2015 until August 1, 2015. On August 1, 2015, the plant became a subsidiary of the Taylor Corporation, which had purchased the assets of Standard Register, and since then has operated it since as Standard Register, Incorporated. Taylor is based in Minneapolis, Minnesota and operates about 100 facilities nationwide with 12,000 employees. Taylor hired 74 of the 77 Standard Register bargaining unit employees when it began operating the York plant.

Taylor acquired Standard Register facilities other than the York plant. One other, located in Fayetteville, Arkansas was unionized. Taylor closed the Fayetteville facility in 2015.

Greg Jackson, an Executive Vice-President of Taylor Corporation, met with all 3 shifts at the York plant on July 20, 2015. He informed the unit employees that Taylor would not adopt the Union's contract with Standard Register, but that it would recognize and bargain with the

Union.[1] However, Jackson told employees that Taylor would not deduct union dues from their paychecks. As of August 1, Taylor implemented its own policies at the York plant and stopped deducting union dues. The Union sought to collect dues voluntarily with little success. According to John Potts, an official of the Union's District Council 9, 25 employees regularly paid union dues. On the hand, Troy Warner, the York Operations Manager, testified that Ted Billet, the local union president, told him in the fall of 2015 that only a handful of employees were regularly paying union dues. In September 2015, the Union reduced its dues and in March 2016 stopped charging members dues altogether.

The Union demanded that Taylor rescind its unilateral changes to employees' hours, overtime policies, personal time off, holidays and tardiness. Respondent did so in September 2015.

Respondent and the Union began bargaining on August 29, 2015 and held about 25 negotiating sessions between that date and February 22, 2017. Respondent's lead negotiator was outside counsel, Nicholas Fiorenza, who received direction from Taylor VP Greg Jackson. Jackson began attending contract negotiations regularly in March 2016. John Potts was the Union's chief negotiator. He was assisted by Ted Billet, the local union president, who was an employee at the York facility.

Respondent unilaterally grants unit employees merit pay increases in February 2016

The Union files an unfair labor practice in August 2016

A major issue throughout negotiations was Respondent's desire to grant wage increases exclusively or largely on merit. The Union bargained for at least some across-the-board wage increases. In February 2016, without prior notice to the Union, Respondent gave merit increases to all but 5 employees at the York plant. At a bargaining session in late March 2016, company representative Fiorenza admitted that this was a mistake. Prior to April 4, 2016, the Union made it clear to Taylor that it did not want the increases to be rescinded, Jt. Exh. 9.

On April 4, 2016, Nicholas Fiorenza sent the following email to union negotiator John Potts, Jt. Exh. 9.

> I want to reiterate what Greg Soltis[2] said about the increases at our meeting last week. Merit pay was being administered corporate-wide by Taylor and the York increases were implemented along with the rest in error. I learned about the increases on March 28, just before our meeting.. It was my intention to let you know what the Company was contemplating and to provide an opportunity to bargain in advance of anything being done. The added holiday for 2018 and the safety shoe allowance are similarly corporate-wide changes that should only have been implemented with prior bargaining.

[1] The last collective bargaining agreement between the Union and Standard Register ran from 2014 to 2016.

[2] A company vice-president or regional manager based in Dayton, Ohio.

> I certainly understand the Union's position about not wanting the Company to suspend or rescind the increases or other items. Nevertheless, I wanted to reach out to you to explore what we can do to correct this error. We have reinforced our directive to refrain from implementing any unilateral terms without prior communication and opportunity to bargain with the Union. We are willing to take other steps including a written communication to all bargaining unit employees explaining that the increases should have been undertaken only with prior bargaining and Union involvement. We would also reinforce our obligations to bargain in good faith with your Union. We would also consider other things you may suggest as well.
>
> John, let me know if you would like to bargain with respect to the increases detailed on the attached or whether you would like to discuss anything further in terms of correcting the Company's error. Thank you.

The Union did not directly respond to the offers contained in Fiorenza's April 4, 2016 email. It stated that it would wait to see what progress would be made in collective bargaining negotiations before deciding whether or not to take any future legal action, Jt. Exh. 10.

The Union filed an unfair labor practice charge on August 25, 2016, alleging that Respondent had violated the Act by unilaterally implementing the merit increases, dealing directly with unit employees about the increases and telling a unit member not to discuss her wages. As discussed below, this charge was settled in early December 2016.

The collective bargaining sessions of November 1-3, and 29 2016

The parties met in negotiation on November 1-3, 2016. They had reached tentative agreement on many issues. Respondent contends that as of November 3, the parties reached agreement on a collective bargaining agreement. The Union disputes this.

John Potts testified that he told company representatives that he would meet with bargaining unit employees to determine if they were willing to ratify a contract as proposed by Respondent. However, Potts testified that the parties had not tentatively agreed on a number of issues: whether employees would be paid for accrued personal time off upon termination; whether employees must use personal time off for FMLA absences; whether hours on personal time off would be included in calculating an employee's eligibility for overtime pay in excess of 40 hours in a work week; whether holiday hours worked would be paid per straight time or time and a half; and whether the company could insist upon an employee/management review board as a step in the grievance/arbitration process.

On November 7, Potts informed Fiorenza in writing that the Union would meet with unit employees on December 4. He stated that unit members would vote on accepting the company's proposals, Jt. Exh. 18.

On November 15, company negotiator Nicholas Fiorenza sent union negotiator John Potts an email stating that Respondent was under the impression that the parties had reached a tentative agreement on an overall contract. Potts responded that the Union's negotiating

committee would recommend that employees accept the company's last proposal. At the instant hearing, Potts testified that his email was a mistake; that he meant to stay only that he personally, as opposed to the negotiating committee, would recommend acceptance of the company proposal. At about this time Respondent started to consider polling unit employees regarding their support for continued union representation.

Respondent asked for another negotiating session which occurred on November 29, 2016. At this session, the parties agreed on a peer review system which was at least similar to the one proposed by Respondent earlier in the month.

Christopher Crump, Respondent's plant manager at York, met with all 3 shifts on November 30, and distributed a memo which had been written for him at corporate headquarters. It discussed the Union's unfair labor practice charges and the Union's plans to hold a meeting and conduct a ratification vote of December 4. The memo stated:

> Just as the appeal was being resolved,[3] the Union filed yet another unfair labor practice charge against us. This one complained that the way that merit wage increases were given to you and your co-workers earlier this year violated the law. This could have resulted in these wage increases being taken away.
>
> We responded to the charge by denying that we violated the law by giving our employees merit increases. As of today we believe we are very close to a settlement with the NLRB that continues to preserve your merit increases and maintains our position that we have not violated the law.[4]

Jt. Exh. 26.

Crump did not inform unit employees that the Union had informed Respondent that it was not seeking rescission of the 2016 merit wage increases.

On December 1, Greg Jackson instructed Fiorenza to conduct a poll to test employees support for the Union quickly if the union meeting, scheduled for December 4, did not result in a collective bargaining agreement, G.C. Exh. 11.

Settlement of the August Unfair Labor Practice charge

The August 25, 2016 unfair labor practice charge was settled on December 5, 2016. Nicholas Fiorenza signed the agreement on November 30; the Union and General Counsel signed on December 1 and the Acting Regional Director approved the agreement on December 5. This agreement contained a non-admissions clause.

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[3] The General Counsel declined to go to complaint on the Union's earlier charge that Respondent violated the Act by unilaterally implementing new terms and conditions of employment when it began operations on August 1, 2015.

[4] Despite this and the non-admissions clause in the settlement agreement, Respondent was well aware that the unilateral implementation of merit pay at York during bargaining for an initial contract was a violation of Section 8(a)(5) and (1), Tr. 560.

The terms of the settlement required Respondent to post a notice for 60 days at the York plant. In the notice, Respondent promised not to makes changes to its merit pay system with regard to York bargaining unit employees—without first notifying the Union and providing an opportunity to bargain about such changes. The notice stated that previously during collective bargaining, Respondent offered to rescind changes already implemented and stated that "the Union decided to forgo this remedy."

The Union holds a "ratification" meeting for bargaining unit employees on December 4, 2016

The Union held a meeting for bargaining unit employees on December 4, 2016. Somewhere between 40 to 54 employees attended. A "ratification" vote was taken on Respondent's last proposed contract.[5] Those attending the meeting voted not to ratify the proposal.

Respondent conducts a poll on employee support for the Union

On December 5, 2016, Nicholas Fiorenza informed Potts that Respondent would be conducting a poll to determine unit employees' support for the Union. The Union handed out flyers encouraging employees to boycott the poll. 43 of the 77 unit members voted in the poll, which was conducted on December 8. 38 voted against further union representation; 5 voted in favor; thus the poll did not establish that a majority of the unit employees no longer wanted the Union to represent them. On December 9, the Union requested that Respondent resume bargaining.

On December 20, Fiorenza advised Potts that the company was filing an RM petition to determine the degree of employee support for the Union. He advised the Union that additional unit employees, who were not present on December 8, had submitted written notes indicating that they no longer desired to be represented by the Union.[6] However, Respondent decided not to file the RM petition because the Region advised that it would not process it in light of the recent settlement.

In January 2017, Respondent notified the Union that it wished to distribute merit pay in February. The Union responded by saying it would discuss this at the bargaining table.

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[5] I discredit Brett Eckert's testimony that Potts told unit employees that they were voting on whether they wanted union representation or not. It is highly implausible that the Union would voluntarily risk giving Respondent such a sound basis for withdrawing recognition.

[6] Plant Manager Chris Crump identified these employees as James Wiley and Greg Brown. Crump testified that he sent these notes to Greg Jackson. The notes were not introduced at this trial. Neither Wiley nor Brown (who no longer worked for Respondent by the time of the March poll) testified. G.C. Exh. -19 establishes that this testimony is inaccurate with respect to Brown. However, I credit Crump's testimony with regard to Wiley. 2 days before the poll, Operations Manager Troy Warner identified 3 employees who would have a personal time off on the day of the poll; Wiley, Robert Peterson and Greg Puchalsky.

February 21 and 22, 2017 bargaining sessions

On February 16, Nicholas Fiorenza advised Potts of two changes in Taylor corporate policy. One was a change to the personal time off policy; the new policy called for the payout of accrued PTO in the event of termination under favorable circumstances (as opposed to its previous policy which provided for payout only upon plant closure). This change was very similar to the position the Union had been taking throughout bargaining. The second change was an employee hotline.

The parties met on February 21 and 22, 2017. The Union agreed to the hotline, but had questions about the new PTO policy and how the merit pay would work. The company presented a power point demonstration which indicated that only 2/3 of the unit would receive any wage increase. The Union proposed a 1% wage increase across the board plus merit pay. Company representatives responded by stating that an across-the-board increase would eat up most of the money allocated to wage increases and would leave an insufficient amount left for merit increases. Respondent proposed to rework its merit pay proposal and get back to the Union. In essence the parties were still not in agreement on how wage increases would be granted in the future. However, the Union had tentatively agreed to no across-the-board increases during the first year of a contract. Respondent never agreed to any across-the-board increase at any time.

Another issue as to which the parties had not agreed was whether all compensable time, whether worked or not, would be counted in calculating an employee's eligibility for overtime pay (more than 40 hours in a week). Respondent always maintained that it would consider only hours worked and would not count compensable hours for which an employee was on any type of leave.

A Second Poll on March 7, 2017; Withdrawal of recognition

On March 3, Respondent informed the Union that it would be conducting another poll on March 7 to determine whether the Union enjoyed majority support of bargaining unit employees. In a memo to unit employees, which was attached to its email to the Union, Respondent stated it was doing so on the grounds that after the December poll, "two additional employees stepped forward and indicated to us that they did not want representation by the union, "Jt. Exh. 43.

52 of the 74 bargaining unit employees voted in the March 7 poll. 47 voted that they did not want to be represented by the Union; 5 voted in favor of continued union representation. On the basis on this poll, Respondent withdrew recognition from the Union on March 8 and began to make unilateral changes in the terms and conditions of unit employees' employment. One change was in its personal time off policy, which was changed to provide for payout of accrued PTO time upon the termination of employment in most cases.

What Respondent knew or suspected regarding employee support for the Union

From the outset of its operations at York plant, Respondent questioned whether the Union enjoyed majority support of the bargaining unit employees. On August 3, 2015, 3 days after Taylor began operating the facility, Greg Jackson wrote Nicholas Fiorenza:

> One other piece of information I want to remind you of is that we have a legitimate question whether the union is favored by a majority of the people in the old collective bargaining unit. Two other facilities had been merged into York over the past 12 to 18 months and the employees from those facilities or hired because of moving that work seem to have a strong desire to exit the union.

Exh. R-6.

Fiorenza advised Jackson that until Respondent had objective evidence of the Union's lack of majority status, it was obligated to bargain with it.

A number of unit employees, many of them who had come to the York plant from Workflow One, expressed dissatisfaction with the Union to management. However, most of these communications occurred right after Taylor took over the York plant.[7] Troy Warner, who was the plant manager until March 2016,[8] repeatedly, from November 2015 on, told higher management and Nicholas Fiorenza that employees did not want Taylor to bargain with the Union.

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[7] James Bupp spoke to about 14 employees who expressed dislike of the Union in the later part of 2015. Much of this discussion may have centered on the initiation fee employees had to pay upon transferring from Workflow to the York plant and having dues deducted from their paychecks. Bupp testified to being aware of a few employees who supported the Union.
Brett Eckert was the only rank and file employee to testify in this proceeding. He testified that 25-30 employees from Workflow who expressed dissatisfaction with the Union, mainly due to the initiation fee. Not all of these worked at York after Taylor took over on August 1, 2015. Eckert also mentioned other employees who expressed dissatisfaction with the Union to him, but virtually all these conversations appear to have occurred in 2015. It appears that Eckert transmitted little, if any, news about dissatisfaction with the Union to management in 2016 or 2017. Also, he testified to 10-15 employees, who in mid-2015, were concerned about Taylor's refusal to honor the Union's contract with Standard Register.
Eckert's credibility is suspect. He testified that John Potts told employees at the December 4, 2016 that they were voting on whether to they wanted the Union or not. I am absolutely certain this is not accurate.
Troy Warner testified about conversations he had with numerous unit employees about the Union mostly in 2014 and 2015. However, when Warner gave an affidavit to a Board Agent on April 18, 2017, he was specifically asked about anti-union statements he heard from employees. He named 8 and did not mention hearing any anti-union comments from any other employees. Tr. 765-66. On this basis I decline to credit his testimony with regard to statements made to him by other employees.

[8] Warner is now Operations Manager, reporting to plant manager Christopher Crump.

However, Warner testified that in the latter half of 2014 he thought that 20% of the unit employees wanted the Union; 20% did not want the Union and 60% were undecided or simply not vocal, Tr. 705.

Respondent's contract proposals provided for a union shop, Jt. Exhs. 12 and 17. If adopted, employees would have been required to pay union dues and would be terminated if they did not. Chris Crump, Respondent's plant manager, advised employees of this in a July 28, 2016 memo, Jt. Exh. 12.

Analysis

Good Faith Doubt of the Union's Majority Status

As a general proposition, an employer may test the majority status of an incumbent union by polling bargaining unit members if it has a "reasonable good-faith doubt" (or good faith grounds to doubt-to be uncertain) that the Union enjoys such status, *Allentown Mack Sales and Service, Inc. v. NLRB,* 522 U.S. 359 (1998). Thus, the first issue in this case is whether Respondent had such a good-faith reasonable doubt to entitle it to conduct the December 8, 2016 and March 7, 2017 polls. I conclude that it did so.

Respondent had heard through its supervisors that many unit employees did not want representation by the Union. Virtually all that information was almost a year and half old by the time Respondent decided to conduct the December 2016 poll. Much of it emanated from the period when the former Workflow employees discovered they would have to pay union dues and an initiation fee.

SRI's management was aware that a decertification effort failed after directing anti-union employee David Humberd where to seek help. In claiming good faith doubt, Respondent does not rely on any information it received regarding dissatisfaction with the Union between October 31, 2016 when Humberd informed Plant Manager Crump of the failure of the decertification petition and Greg Jackson's decision on December 1, 2016 to poll unit employees.

The only thing that changed between October 31, and December 1, was the Union's bargaining tactics to which Jackson took great exception and the December 4 union meeting. I find that the poll was motivated in part by Jackson's reaction to the Union's decision to hold a meeting on December 4, without telling the employees that the parties had agreed on a contract.[9] However, Jackson credibly also testified that the decision to conduct the poll was based on reports he received that the December 4 vote was in fact a vote against union representation.

[9] Jackson's expressed desire to conclude a collective bargaining agreement with the Union is most mysterious in light of his long-held opinion that the Union lacked majority support. If he had a good faith belief that the Union did not enjoy majority support, this desire would seem inconsistent with the Section 8(a)(2) of the Act—which forbids contracting with a minority union.

Given the fact that unit employees were presented with a proposal that would have required the payment of union dues, I find this was not an unreasonable conclusion.[10]One could reasonably be uncertain as to whether the results of the December 4 meeting indicated opposition to the Union or to Respondent's contract proposal. I find that Respondent was entitled to find out which by conducting a poll.

In March 2017, Respondent had reason to doubt the Union's majority status based on the results of the December poll and the information it received from James Wiley, who did not vote in the December poll.[11] Wiley's vote plus the 38 votes against the Union on December 8 would establish that a majority of bargaining unit members did not support continued union representation.

Was Respondent barred from polling unit employees because it had just settled a ULP charge a few days earlier?

The General Counsel relies on *AT Systems West,* 341 NLRB 57, 61 (2004) and *Poole Foundry and Machine Co.,* 95 NLRB 34, 36 (1951) for the proposition that Respondent had not bargained in good faith for a reasonable time after the approval of the settlement agreement in early December 2016. Factually, the parties negotiated once after the settlement, the 2-day sessions on February 21 and 22, 2017.

The General Counsel also contends that pursuant to the criteria set forth in *Master Slack Corp.,* 271 NLRB 78, 84 (1984), this record establishes a nexus between the February 2016 merit pay increase and the results of the December 2016 poll. Applying those criteria, I find to the contrary, that such a nexus has not been established. The 9 months between the wage increase and the poll are too remote to establish a nexus—particularly in the absence of employee testimony to that effect. The nature of the violation and its tendency to cause disaffection are such that they would communicate to employees that they have no need for union representation. However, Respondent offered to fully remedy the effects of the violation in April 2016, to which offer the Union did not respond.[12]

On the other hand, Respondent's November 30, 2016 memo, suggesting that the August ULP charge could result in these wage increase being taken away, would certainly have a tendency to effect the outcome of the poll. However, no employees testified about this memo, so one cannot ascertain whether it affected the poll results or not. Thus, I find that the December 8, 2016 poll was not rendered invalid by the alleged failure to bargain in good faith after the settlement.

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[10] One reason the record contains so little information about employee reaction to the Union's presentation on December 4, is that the General Counsel objected to Respondent's questioning of Brett Eckert about employee questions and comments, Tr. 666-67.

[11] Although I discredit Respondent's testimony regarding Greg Brown, I credit it regarding Wiley, who was not scheduled to work on December 8.

[12] The General Counsel at page 18, footnote 15 of his brief, faults Respondent for not fully curing the violation, without the Union's permission. It strikes me that if the Union wanted to effectively counteract the effects of the merit increase, it would have taken Respondent up on its offer as opposed to relying on the posting of a Board notice some months in the future.

Did Respondent violate the Act in withdrawing recognition from the Union?

When Respondent withdrew recognition from the Union on March 7, it had objective evidence that the Union did not enjoy the support of a majority of unit employees. I conclude that Respondent was entitled to withdraw recognition.

In this case there is no evidence linking the Union's loss of majority support to any of the alleged or settled unfair labor practices committed by Respondent. Respondent never refused to meet and bargain with the Union and indeed did so regularly, including on November 1-3, 29 and February 21 and 22.[13]

Conclusions of Law

1. Respondent did not violate Section 8(a)(1) in polling unit employees on December 8, 2016 and March 7, 2017.

2. Respondent did not violate the Act in withdrawing recognition from the Union on March 8, 2017.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[14]

ORDER

The complaint is dismissed.

Dated, Washington, D.C. February 26, 2018

Arthur J. Amchan
Administrative Law Judge

[13] The General Counsel has not alleged that Respondent failed to bargain in good faith.
[14] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.